

## EXECUTIVE SUMMARY



**1** The Crown Prosecution Service is the principal prosecution authority in England and Wales. It works closely with the police and the courts to bring offences to justice in the magistrates' courts. The Crown Prosecution Service has an annual expenditure of £568 million, employs over 7,800 staff and, in 2004-05, prosecuted about 1.25 million people for criminal offences. The vast majority (92 per cent) in terms of numbers of cases were in the magistrates' courts.

**2** This study considers the performance of the Crown Prosecution Service in making effective use of magistrates' court trials and hearings. It estimates the number of ineffective hearings in the magistrates' courts, in particular those due to the Crown Prosecution Service (as opposed to the police) although most ineffective trials and hearings are to do with defence-related problems.<sup>1</sup> With the help of Her Majesty's Courts Service, we recorded the outcome of over 6,000 hearings and reviewed case files relating to over 1,300 hearings to produce a statistical sample on which to base our conclusions and recommendations. As a result we have estimated that ineffective trials and hearings cost the criminal justice system £173 million, of which the Crown Prosecution Service is responsible for about £24 million. The study identified examples of good practice, recommends changes to the Crown Prosecution Service's working practices and recognises that the criminal justice agencies need to work together more closely to improve the efficiency of the prosecution of magistrates' courts cases.

**3** The Crown Prosecution Service is currently undertaking a business change programme to improve its performance and enhance its contribution to the performance of the criminal justice system. It is playing a key role in delivering the Government's objectives for the criminal justice system through the criminal case management programme. This includes the charging programme, which means prosecutors now decide the charge, and the No Witness, No Justice initiative, which is designed to improve witness attendance at court. Reducing the proportion of ineffective trials is a criminal justice system Public Service Agreement target towards which the police, the Crown Prosecution Service and the courts have made good progress. Better value for money across the criminal justice system could nevertheless be achieved in relation to magistrates' courts hearings if the Crown Prosecution Service were to implement the recommendations outlined in paragraph 20.

## Overall conclusions

**4** The cost of prosecutions includes both case preparation and time at court, including that of other criminal justice agencies. Pre-trial hearings, for example, require the attendance of prosecution and defence lawyers, magistrates and courts staff. Trials additionally involve witnesses, including the police, and sometimes probation staff and prison escorts. Adequate preparation for hearings and trials is, therefore, important, to avoid unnecessary adjournments or the dropping of charges, once the case reaches court.

<sup>1</sup> The National Audit Office reported on this in *Facing Justice: Tackling defendants' non-attendance at court* (HC 1162 Session 2003-04).

**5** In this report we consider the Crown Prosecution Service's role in the effective use of magistrates' hearings, specifically whether it:

- plans and prepares cases to make effective use of hearings;
- uses court time for the purposes of the hearings listed; and
- is taking action to improve its performance in magistrates' courts.

**6** From our examination we estimate that 28 per cent of all pre-trial hearings (784,000 annually) are ineffective. The defence is responsible for just over 478,000 of these, often where the defendant fails to attend, and the prosecution (that is the Crown Prosecution Service or the police or both)<sup>2</sup> for about 165,000, of which we estimate that about 71,000 can be attributed to the Crown Prosecution Service. In addition, published statistics show that 62 per cent of magistrates' courts trials were ineffective<sup>3</sup> or 'cracked'<sup>4</sup> in 2004-05. Similarly, the defence was responsible for the majority of failed trials but nearly 17 per cent (19,500) were attributable to the Crown Prosecution Service. Together, we calculate that ineffective hearings and cracked and ineffective trials cost the taxpayer £173 million each year, of which just under £24 million was attributable to the Crown Prosecution Service.

**7** Individual prosecutors deal with a large volume of cases, often at very short notice. Nevertheless, we found that problems with the Crown Prosecution Service's planning and preparation for magistrates' courts hearings contribute to ineffective hearings. There is insufficient oversight of cases; lawyers often do not have enough time to prepare for hearings; there could be more effective systems for prioritising and progressing urgent or high-risk cases; evidence is sometimes incomplete; and files are mislaid. The police and the courts contribute further to the inefficiencies that result in prosecution delays: often the police do not provide the evidence in time for the hearing; and Her Majesty's Courts' Service staff move cases between courtrooms, so that prosecuting lawyers have to present cases they have not prepared.

**8** Nationally, the Crown Prosecution Service is seeking to improve its performance through initiatives such as No Witness, No Justice, which aims to support prosecution witnesses through the courts process, and the Charging Initiative which passes responsibility for determining charges from the police to the Crown Prosecution Service. Also, it is playing a key part in Local Criminal Justice Boards to promote joint working with the other criminal justice agencies. We found good examples of local action by Crown Prosecution Service offices to improve performance at magistrates' court hearings, but generally the Crown Prosecution Service needs to do more to re-organise and modernise its management of magistrates' court casework.

## Main Findings

**9** Statistics published by the Department for Constitutional Affairs show that in 2004-05 there were 190,466 trials, of which 117,922 (62 per cent) did not go ahead as planned. The defence was responsible for just over half, most frequently because the defendant pleaded guilty on the trial date. In addition 38 per cent (45,366) of the trials that did not go ahead, fell either because the prosecution case was not ready or the Crown Prosecution Service dropped the charges on the day of the trial. The Crown Prosecution Service was responsible directly for just under 17 per cent of the 117,922 trials which did not go ahead.

**10** In addition, there were over 2.8 million other hearings in magistrates' courts relating to Crown Prosecution Service cases.<sup>5</sup> These hearings are where the defendant pleads guilty (uncontested cases), or preliminary hearings that precede a trial. There are no statistics on the number of ineffective hearings. We therefore conducted a statistical exercise which showed that 28 per cent (784,000) of all hearings were ineffective and that they can occur at any stage. For example, 24 per cent of first hearings and 33 per cent of committal hearings were ineffective. As with trials, the defence (specifically the failure of the defendant to attend court) was the most frequent cause of ineffective hearings (at least 61 per cent); but the prosecution<sup>6</sup> was responsible for at least 21 per cent, and caused more delays at committal hearings than the defence. This means that, in addition to the 45,366 trials, we can have 95 per cent confidence that annually between 150,000 and 180,000 ineffective hearings are due to the prosecution.

2 Throughout the report 'the prosecution' refers to the Crown Prosecution Service and the police, if not otherwise specified.

3 Ineffective hearings are those that do not proceed on the scheduled day and are adjourned to a later date.

4 Cracked trials are concluded on the day without the case being heard for example because the defendant pleads guilty or the prosecution offers no evidence.

5 National Audit Office analysis of Crown Prosecution Service management information.

6 The Crown Prosecution Service and the police.

Common reasons for the prosecution problems	Example
<b>Insufficient evidence (44 per cent), for example CCTV footage, a medical report or forensic evidence was not available</b>	A defendant was charged with assaulting an adult and child in October 2004. Despite repeated requests from the Crown Prosecution Service, the police delivered the forensic evidence (a comparison of blood on the defendant's clothes with that of the victim), only on the day of the trial in April 2005, which showed that the blood did not match. The prosecution witness was also considered unreliable.
<b>The Crown Prosecution Service had failed to make a legal decision or to take action (32 per cent), such as to amend the charges or to discontinue the case</b>	The police had lost contact with the complainant, but the Crown Prosecution Service allowed the case to continue for another three months until the trial date, when the case was finally dismissed after ten hearings.
<b>Material had not been disclosed to the defence in time for the hearing (10 per cent)</b>	The prosecution had not disclosed to the defence the schedule of unused material in a driving without due care case, despite three letters of request from the defence solicitor.
<b>Poor administration (10 per cent) where files or correspondence had been mislaid</b>	A Crown Prosecutor took a file to court for the wrong hearing date and then took it home. When the case was actually scheduled for hearing it was unavailable, resulting in an unnecessary adjournment.

*Source: National Audit Office analysis*

**11** To understand the reasons for prosecution problems, we carried out court observation and file review for 1,300 hearings including a sample of cases where the outcome had been unsuccessful. From this we obtained information on 622 ineffective hearings. We found that 26 per cent of these failed hearings were attributable to the prosecution (a higher proportion than the 21 per cent recorded in the statistical exercise referred to in paragraph ten above). Of the failed hearings caused by the prosecution; 43 per cent were caused by the Crown Prosecution Service, 43 per cent by the police; and the remaining 14 per cent were due to both organisations. The table above shows the most common reasons for prosecution problems.

**12** Each prosecutor has to deal with a large volume of cases, many of which may be received just prior to presenting the case at court, for example, because defendants were taken into custody overnight. Even when there is sufficient time to prepare cases, courts staff may move cases between courts with the result that the prosecutor has to present new, unseen cases. Against this background, we found that further avoidable problems within the Crown Prosecution Service arose for the following reasons:

- **a lack of ownership of cases:** there is a lack of continuity in presenting cases. We found that in a sample of 234 cases with more than one hearing, 54 per cent had been presented by a different

advocate at each hearing, and only 15 per cent of cases had been presented by the same prosecutor throughout;

- **a lack of preparation before hearings:** lawyers receive the files less than 24 hours before hearings and may not have time to prepare fully for the hearing if they are already in court. The problem is exacerbated when court staff move cases between courts during the day to use spare capacity elsewhere so that cases are given to other lawyers at the last minute;
- **inadequate prioritisation of cases which require urgent action:** urgent cases, for example, those given a short adjournment are not prioritised sufficiently. As a result, the necessary action may not be taken in time for the next hearing;
- **poor case tracking results in files being mislaid:** details of location may not be updated on the file information system, a lawyer may have taken a file home, or it may have been misfiled; and
- **incomplete evidence is on the file:** in 35 per cent of ineffective hearings caused by the prosecution, delays had arisen because the police had not provided the Crown Prosecution Service with the evidence. The Crown Prosecution Service cannot direct the police to follow up a line of investigation or to collect evidence.

**13** We calculate that ineffective hearings cost the taxpayer £173 million, of which just under £24 million is due to failings in preparation, and delays in decision making, by the Crown Prosecution Service, taking into account both the costs of the criminal justice agencies in bringing the prosecution, and increased criminal legal aid payments to defence solicitors. If the Crown Prosecution Service were to reduce the number of ineffective hearings and cracked and ineffective trials for which it is responsible, this would release savings of around £2.4 million for every ten per cent by which these hearings were reduced.

**14** Some Crown Prosecution Service areas are trying to address these problems. For example, the Cardiff office is re-organising its teams so that lawyers assigned to discrete police divisions jointly monitor and present cases in specified court rooms. This increases continuity of presentation, reduces delays in decision-making and assists with file-tracking. There would be merit in developing this approach elsewhere so that:

- administrative staff are located and work closely with lawyers to help monitor and action cases. At present, administrative staff in most of the offices we visited are managed in separate teams carrying out routine clerical support such as filing and post opening, but failing to provide the proactive support lawyers require; and
- administrative staff are trained to carry out more complex administrative tasks such as liaising with the police, defence solicitors and courts, to free up the time of lawyers for review and preparation of cases.

**15** The Crown Prosecution Service is making efforts to release lawyer resources by using designated case workers to present more straightforward cases in magistrates' courts. In 2004-05, magistrates' courts scheduled only enough cases to occupy designated case workers for 60 per cent of their time; increasing this to 80 per cent would release the equivalent of 33 lawyers for other work and achieve savings of £2.3 million.<sup>7</sup> To achieve this will require the co-operation of Her Majesty's Courts Service.

**16** More generally, not enough use is made of the information about the use of resources. No reconciliation is made of the funds provided for magistrates' court work with the resources allocated to it. From our interviews with Chief Crown Prosecutors and our observations at the area offices, there appears to be an imbalance in the staffing mix, with fewer lawyers and more administrative staff than needed. Without a system of time recording, however, it is not possible to determine whether resources for magistrates' court work are being diverted to Crown Court cases.

**17** The Crown Prosecution Service is seeking to improve case management and tracking of files by the introduction of its electronic case management system, Compass. Further improvements could be made by providing lawyers with the means to record information electronically at court. At present, details recorded manually at court are later transcribed onto Compass by administrative staff. Eliminating this duplication would both speed up the processing of files and save the equivalent of around 60 full-time administrative staff, giving a net saving of £5.5 million over five years.

<sup>7</sup> Crown Prosecution Service report on Higher Courts Advocates and Designated Case Workers.

**18** A number of the improvements necessary to prevent ineffective hearings require the co-operation of the police and the courts. In Greater Manchester, case progression officers have proven to be effective in reducing the number of ineffective trials, but while the Crown Prosecution Service has established successful joint working between itself and the Courts in Trafford, this has not been possible in other areas, such as Manchester City, where the court appointed a case progression officer only recently. Increasing continuity of presentation will also require the co-operation of Her Majesty's Courts Service to list cases from particular police divisions together in designated court rooms.

**19** We found examples where local Crown Prosecution Service offices were working successfully with the other criminal justice agencies to resolve problems across their organisational boundaries. For example, Manchester Crown Prosecution Service has persuaded Her Majesty's Courts Service to arrange for District Judges to conduct pre-trial reviews. For its part the Crown Prosecution Service has enabled its lawyers to spend more time preparing for committal hearings, and thus reduce the number of adjournments requested. Both the Association of Chief Police Officers and the Crown Prosecution Service told us that the Charging Initiative was increasing co-operation between them and reducing the number of non-viable cases going to court. The Crown Prosecution Service, together with the Local Criminal Justice Boards, should take the lead in setting up more of these mutually beneficial arrangements.



## RECOMMENDATIONS

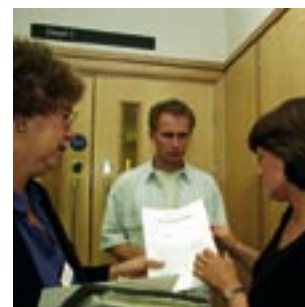
**20** The Crown Prosecution Service should:

### Improve joint working with other criminal justice agencies

- a** Chief Crown Prosecutors should continue to take the lead at a local area level in setting up arrangements with the police and courts to improve the efficiency of prosecution of magistrates' court cases, including:
- appointing case progression officers;
  - listing contested cases according to the originating police division;
  - brigading cases that can be presented by a designated case worker without the support of a crown prosecutor;
  - extending the use of designated caseworkers; and
  - establishing a Crown Prosecution Service contact point notified to police, courts and defence lawyers for all magistrates' court cases (paragraph 3.20).

### Maintain proper oversight of the cases

- b** establish case management teams in each area responsible for reviewing, and presenting, a tranche of cases from a single police division where possible in a discrete magistrates' court (paragraphs 3.4–3.7). The size of the teams should be determined by the size of the police unit with which they are aligned, but typically would be no more than 10–12 lawyers;
- c** assign to the case management teams a designated case worker and administrative staff who would be located and work closely with the lawyers (paragraphs 3.10–3.13);
- d** extend the training programme to all lawyers to equip them for their new role either as casework team managers or members (paragraphs 3.11 and 3.13); and
- e** conduct case work review in all areas to ensure the quality and efficiency of decision making is satisfactory (paragraphs 2.29–2.30).



### Make more prosecutor time available for review and preparation

- f** provide training for caseworkers on magistrates' court procedures and their roles and responsibilities in the case management team (paragraphs 3.11 and 3.13);
- g** introduce time recording for legal and administrative staff to establish the current resources engaged on magistrates' court cases (paragraphs 3.16–3.18); and
- h** compare the Crown Prosecution Service's Activity Based Costing model with the actual resources engaged on magistrates' court cases to ensure there is the correct mix of staff (paragraphs 3.16–3.18).

### Prioritise cases to ensure that they are ready when they come to court

- i** develop procedures to identify and prioritise urgent and high-risk cases such as those with short adjournment dates or requiring medical evidence, to ensure the evidence is obtained in time for the next hearing (paragraphs 2.27, 2.28, 3.8–3.9).

### Remove duplication and release resources

- j** provide Crown Prosecutors with electronic equipment to enable them to update the case management system at court (paragraphs 3.19–3.20).